

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (herein the “Agreement”) is entered into this _____ day of _____, 20____, by and between T&M Nixon Family Limited Partnership, a Utah limited partnership (herein “Developer”), for the land to be included in or affected by the project located at approximately 3750 South 6770 West in West Valley City, Utah, and West Valley City, a municipal corporation and political subdivision of the State of Utah (herein the “City”).

RECITALS

WHEREAS, Developer owns approximately 5.04 acres of real property located at 3750 South 6770 West in West Valley City, Utah, as described in Exhibit “A” (the “Property”), on which Developer proposes to establish minimum standards for a new housing development (the “Project”); and

WHEREAS, Developer has voluntarily represented to the West Valley City Council that it will enter into this binding Development Agreement (the “Agreement”); and

WHEREAS, Developer is willing to restrict the property in a manner that is in harmony with the objectives of the City’s master plan and long-range development objectives, and which addresses the more specific development issues set forth in this Agreement, and is willing to abide by the terms of this Agreement; and

WHEREAS, the City, acting pursuant to its authority under the Utah Municipal Land Use, Development, and Management Act, U.C.A. §10-9a-101, *et seq.*, and its ordinances, resolutions, and regulations, and in furtherance of its land-use policies, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **Affected Property.** The legal description of the Property contained within the Project boundaries is attached as Exhibit “A.” No additional property may be added to or removed from this description for the purposes of this Agreement except by written amendment to this Agreement executed and approved by Developer and the City.

2. **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land-use plans, policies, ordinances and regulations after the date of this Agreement, provided that the adoption and exercise of such power shall not restrict Developer's vested rights to develop the Project as provided herein. This Agreement is not intended to and does not bind the West Valley City Council in the independent exercise of its legislative discretion with respect to such zoning regulations.

3. **Compliance with City Design and Construction Standards.** Developer acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it from the obligation to comply with all applicable laws and requirements of the City necessary for development of the Project, including the payment of fees, and compliance with the City's design and construction standards.

4. **Specific Design Conditions.** The Project shall be developed and constructed as set forth in the specific design conditions set forth in Exhibits B, C, D, E, F, and G. The Project shall also comply with all requirements set forth in the minutes of the Planning Commission and City Council hearings on this matter.

5. **Agreement to Run With the Land.** This Agreement shall be recorded in the Office of the Salt Lake County Recorder, shall be deemed to run with the Property, and shall encumber the same; and shall be binding on and inure to the benefit of all successors and assigns of Developer in the ownership or development of any portion of the Property. This Agreement supersedes any and all development agreements that have been executed concerning the Property.

6. **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning also the responsibilities arising hereunder. This restriction on assignment is not intended to prohibit or impede the sale by Developer.

7. **No Joint Venture, Partnership or Third Party Rights.** This Agreement does not create any joint venture, partnership, undertaking or business arrangement between the parties hereto nor any rights or benefits to third parties, except as expressly provided herein.

8. **Integration, Modification, and Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates

all prior conversations, discussions, or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto. Exhibits A, B, C, D, E, F, and G are hereby incorporated into this Agreement.

9. **Notices.** Any notices, requests, or demands required or desired to be given hereunder shall be in writing and should be delivered personally to the party for whom intended, or, if mailed by certified mail, return receipt requested, postage prepaid to the parties as follows:

TO DEVELOPER:

T&M Nixon Family Limited Partnership
Attn: Tom Nixon
1245 E. Pine Ridge Circle
Alpine, UT 84004

TO CITY:

West Valley City
Wayne Pyle, City Manager
3600 Constitution Blvd.
West Valley City, Utah 84119

Any party may change its address by giving written notice to the other party in accordance with the provisions of this section.

10. **Choice of Law and Venue.** Any dispute regarding this Agreement shall be heard and settled under the laws of the State of Utah. Any Utah litigation regarding this Agreement shall be filed in the Third District Court in Salt Lake City, Utah. Any federal litigation regarding this Agreement shall be filed in the United States District Court for the District of Utah in Salt Lake City, Utah.

11. **Court Costs.** In the event of any litigation between the parties arising out of or related to this Agreement, the prevailing party shall be entitled to an award of reasonable court costs, including reasonable attorney's fees.

12. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties. One or more waivers of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision.

WEST VALLEY CITY

ATTEST:

APPROVED AS TO FORM
WVC Attorney's Office

By: _____

Date: _____

By: _____

Title:

On this _____ day of _____, 20____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who that he is the _____ [title], of T&M Nixon Family Limited Partnership, a limited partnership, and that the foregoing instrument was signed by him in behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he acknowledged to me that said limited partnership executed the same.

Notary Public